

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 29 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RICHARD BLAISDELL,)	2 CA-CV 2009-0136
)	DEPARTMENT A
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
CORRECTIONS CORPORATION OF)	Appellate Procedure
AMERICA, WARDEN J. F. LUNA,)	
and GRIEVANCE OFFICER M.)	
BETRUS,)	
)	
Defendants/Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV-200702760

Honorable William J. O'Neil, Judge

AFFIRMED

Richard Blaisdell

Eloy
In Propria Persona

Jones, Skelton & Hochuli, P.L.C.
By Eileen Dennis GilBride and Daniel P. Struck

Phoenix
Attorneys for Defendant/Appellee
Corrections Corporation of America

H O W A R D, Chief Judge.

¶1 Appellant Richard Blaisdell, a Hawaii Department of Corrections inmate incarcerated in Arizona at a correctional center operated by Corrections Corporation of America (CCA), appeals from the superior court’s entry of summary judgment dismissing his civil claims against CCA and certain employees (collectively appellees). For the reasons discussed below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to the party against whom summary judgment was entered.¹ *Orme Sch. v. Reeves*, 166 Ariz. 301, 309-10, 802 P.2d 1000, 1008-09 (1990). In 2002, Blaisdell, then an inmate at a CCA facility in Florence, Arizona, purchased a musical keyboard, a protective bag, and a piano stand (collectively, “keyboard”) after being authorized to do so by the facility’s warden. Blaisdell was subsequently transferred from the Florence Center to another CCA complex in Mississippi and was permitted to take his keyboard with him.

¹As a preliminary matter, we address the appellees’ contention that Blaisdell’s federal claim should be dismissed for failure to exhaust administrative remedies. *See Baker v. Rolnick*, 210 Ariz. 321, ¶ 23, 110 P.3d 1284, 1289 (App. 2005) (prison inmates filing federal claims in state court under 42 U.S.C. § 1983 must first have exhausted all available administrative remedies). Although Blaisdell does assert he filed a lost-property claim with CCA after his keyboard was confiscated, he does not contend he filed the claim within the time required by CCA’s claim policy or that he ever filed an appeal from CCA’s denial of the claim. Accordingly, Blaisdell has not effectively disputed that he failed to exhaust his administrative remedies, and any federal claims are therefore precluded. Additionally, Blaisdell’s federal claims were either not raised below or insufficiently argued on appeal and are therefore waived. *See Webber v. Grindle Audio Prods., Inc.*, 204 Ariz. 84, ¶¶ 27-28, 60 P.3d 224, 230 (App. 2002); *see also* Ariz. R. Civ. App. P. 13(a)(6).

¶3 In June 2007, Blaisdell was transferred again, this time to a CCA complex in Eloy, Arizona. The keyboard was designated as unauthorized property pursuant to the Eloy prison’s policy, and Blaisdell was required to dispose of it by either sending it to someone outside the prison or donating it to the prison chapel or music room. When Blaisdell failed to dispose of the keyboard, it was confiscated. He subsequently sued appellees in superior court, seeking, inter alia, the return of his keyboard. Appellees moved for summary judgment on Blaisdell’s claims, and the court granted the motion. This appeal followed.

Discussion

¶4 On appeal, Blaisdell argues the trial court erred on several grounds in granting the appellees’ motion for summary judgment. A trial court properly grants summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c); *Orme Sch.*, 166 Ariz. at 309, 802 P.2d at 1008. “On appeal from summary judgment, we must determine de novo whether there are any genuine issues of material fact and whether the trial court erred in applying the law.” *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 8, 965 P.2d 47, 50 (App. 1998).

¶5 Here, Blaisdell does not claim the trial court erred in determining there were no genuine issues of material fact; instead, he appears to argue only that the trial court erred as a matter of law in deciding the issues. Accordingly, the sole issue on review is “whether the court correctly applied the law and whether [appellees] were

entitled to summary judgment as a matter of law.” *Blum v. State*, 171 Ariz. 201, 204, 829 P.2d 1247, 1250 (App. 1992). We address each of Blaisdell’s arguments in turn.²

¶6 Citing *Blum*, Blaisdell first contends the trial court erred in finding that A.R.S. §§ 31-228(A) and 13-904(D) were inapplicable to his case and argues the court therefore should not have granted summary judgment in favor of the appellees. Section 31-228(A) provides that “[w]hen a prisoner is released . . . or is discharged from a facility of the state department of corrections there shall be returned to the prisoner everything of value taken upon commitment to the state department of corrections, or thereafter received by the prisoner.” Section 13-904(D) states that “[t]he conviction of a person for any offense shall not work forfeiture of any property, except if a forfeiture is expressly imposed by law.”

¶7 In *Blum*, this court analyzed both statutes to determine whether they were violated by a state prison policy requiring inmates to dispose of unauthorized personal property they acquired while in prison by having an outside person pick it up, donating it to charity, or having it destroyed. 171 Ariz. at 204-07, 829 P.2d at 1250-53. Noting that an inmate would be forced to forfeit rather than abandon personal property if he did not have someone outside of the prison with whom he felt comfortable entrusting it, the *Blum* court concluded the prison’s policy violated § 13-904(D)’s prohibition against forfeitures

²Many of the claims Blaisdell raises on appeal were not raised below in either his response to the appellees’ motion for summary judgment or in his cross-motion for summary judgment. These issues have therefore been waived, and we need not consider them here. *See Webber*, 204 Ariz. 84, ¶¶ 27-28, 60 P.3d at 230.

as well as § 31-228(A)'s nonconfiscation intent. 171 Ariz. at 205-06, 829 P.2d at 1251-52.

¶8 Here, however, as the trial court noted and as Blaisdell himself acknowledges, Blaisdell never contended that he did not have someone outside the prison to whom he could send his keyboard. To the contrary, he made reference to a brother who had helped him during the course of his incarceration. Therefore, even assuming we agree with *Blum*'s interpretation, its conclusion that a policy similar to CCA's resulted in a forfeiture of property in violation of § 13-904(D) is inapplicable to this case.

¶9 *Blum*'s analysis of § 31-228(A) is similarly inapplicable. Section 31-228(A) states that it applies to prisoners discharged from a "facility of the state department of corrections." Although the inmates in *Blum* were incarcerated in a prison run by the Arizona Department of Corrections, the prison in Eloy where Blaisdell resides is a private prison run by CCA. Accordingly, the trial court did not err in finding *Blum*'s analysis of § 31-228(A) inapplicable in this case.

¶10 Blaisdell also argues, however, the trial court erred in granting summary judgment in favor of appellees because confiscating his keyboard violated his constitutional right to due process. But Blaisdell does not explain how the appellees' actions violated his right to due process, and he has therefore waived this argument. Ariz. R. Civ. App. P. 13(a)(6) (argument "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor"); *see also Norgord v. State ex rel. Berning*, 201 Ariz. 228, ¶ 20, 33 P.3d 1166, 1171 (App. 2001).

¶11 Blaisdell next claims his keyboard should be returned because its confiscation violated his right to equal protection in that CCA permitted “all other . . . inmates to possess their previously purchased keyboards in [their] cell[s]” but prevented him from doing so. This court has held that not all classifications are prohibited under the Equal Protection Clause. *State v. Bomar*, 199 Ariz. 472, ¶ 19, 19 P.3d 613, 619 (App. 2001). “Traditionally, courts have applied the rational basis test to equal protection arguments that contest different treatment for differing classes of . . . prisoners.” *Id.* Rational-basis review imposes on Blaisdell the burden of demonstrating that there was no conceivable or rational basis for the confiscation of his keyboard when CCA did not confiscate keyboards belonging to other inmates. *See Martin v. Reinstein*, 195 Ariz. 293, ¶ 52, 987 P.2d 779, 795-96 (App. 1999). Blaisdell must also show that he was “similarly situated to those [inmates] with whom he claims a right of equal treatment.” *Bomar*, 199 Ariz. 472, ¶ 20, 19 P.3d at 619.

¶12 Blaisdell did not provide affidavits or other proper evidence concerning how he is or is not similarly situated to other inmates who were permitted to retain keyboards in their cells. Because he has failed to make that showing or to show CCA lacked a rational basis for preventing him from having a keyboard in his cell, the trial court did not err in determining that Blaisdell’s equal protection rights were not violated.

¶13 Blaisdell finally claims his keyboard should be returned because its confiscation violated CCA’s corporate policy 14-6(E). But Blaisdell does not explain how the appellees’ actions violated CCA policy, and this argument is therefore waived. Ariz. R. Civ. App. P. 13(a)(6) (argument “shall contain the contentions of the appellant

with respect to the issues presented, and the reasons therefor”); *see also Norgord*, 201 Ariz. 228, ¶ 20, 33 P.3d at 1171.

Disposition

¶14 For the reasons stated above, we affirm the trial court’s grant of summary judgment in favor of the appellees.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge